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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2010-0116]

RIN 0579-AD51

Importation of Litchi and Longan Fruit from Vietnam into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the fruits and vegetables regulations to allow the importation of litchi and longan fruit from Vietnam into the continental United States. As a condition of entry, litchi and longan fruit from Vietnam will be subject to a systems approach that includes requirements for treatment and inspection and restrictions on the distribution of the fruit. This action will allow for the importation of litchi and longan fruit from Vietnam into the United States while continuing to provide protection against the introduction of quarantine pests.

EFFECTIVE DATE: [Insert date 30 days after date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Ms. Claudia Ferguson, Senior Regulatory Policy Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1236; (301) 851-2352.

SUPPLEMENTARY INFORMATION:

Background

The regulations in “Subpart-Fruits and Vegetables” (7 CFR 319.56-1 through 319.56-69, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests within the United States.

On October 25, 2011, we published in the Federal Register (76 FR 65985-65988, Docket No. APHIS-2010-0116) a proposal¹ to amend the regulations by allowing fresh litchi (Litchi chinensis Sonn.) and longan (Dimocarpus longan Lour.) to be imported from Vietnam into the continental United States subject to a systems approach that would include requirements for treatment and inspection and restrictions on the distribution of the fruit.

We solicited comments concerning our proposal for 60 days ending December 27, 2011. We received two comments by that date. They were from an organization of State plant regulatory agencies and an association of tropical fruit producers. They are discussed below by topic.

One commenter opposed the proposed importation of litchi and longan from Vietnam stating that the action has the potential to significantly harm the nascent Hawaii-based litchi and longan industry in the United States. The commenter expressed concern about the ability of U.S. growers to compete with foreign litchi and longan growers who have lower production costs.

Under the Plant Protection Act (7 U.S.C. 7701 et seq.), the Animal and Plant Health Inspection Service (APHIS) has the authority to prohibit or restrict the importation of plants and plant products only when necessary to prevent the introduction into or dissemination of plant

¹ To view the proposed rule and the comments we received, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2010-0116>.

pests or noxious weeds within the United States. APHIS does not have the authority to restrict imports solely on the grounds of potential economic effects on domestic entities that could result from increased imports.

The commenter also asked that the U.S. Customs and Border Protection be allowed to inspect foreign fruit for evidence of non-compliant pesticides and to return the commodities to the shipper if evidence of non-compliant pesticides is found within the fruit.

While the United States does not have direct control over pesticides that are used on plant commodities in other countries, there are regulations in the United States concerning the importation of food to ensure that commodities do not enter the United States containing illegal pesticide residues. Through section 408 of the Federal Food, Drug, and Cosmetic Act (FDCA), the U.S. Environmental Protection Agency (EPA) has the authority to establish, change, or cancel tolerances for food commodities. These tolerances are the maximum levels of pesticide residues that have been determined, through comprehensive safety evaluations, to be safe for human consumption. Tolerances apply to both food commodities that are grown in the United States and food commodities that are grown in other countries and imported into the United States.

The FDCA also provides the U.S. Food and Drug Administration (FDA) with authority to inspect food, with the exception of most meat and poultry, when offered for import at U.S. ports of entry. The FDA samples individual lots of imported foods and analyzes them for pesticide residues to enforce the tolerances established by the EPA. Shipments with residues at a level above an EPA tolerance or FDA Action Level, or measurable levels of residues for which the EPA has established no tolerance for a given food, are refused entry into U.S. commerce.

Tolerance levels for all chemicals that are acceptable for use on litchi and longan may be found in EPA's regulations in 40 CFR 180.101 through 180.2020. Tolerance information can also be obtained at <http://www.epa.gov/pesticides/regulating/index.htm>. Information about the FDA's pesticide residue monitoring program is available at <http://www.fda.gov/Food/FoodborneIllnessContaminants/Pesticides/UCM2006797.htm>.

One commenter supported the prohibition against the importation and distribution of litchi and longan into the State of Florida while encouraging irradiation of these commodities prior to importation into the United States to eliminate the possible risk of pest escape prior to treatment. The commenter also requested that APHIS monitor these commodities at the port of entry for the pests Aceria litchii, Oidium nephelii, and Phytophthora litchii, which are not eliminated by irradiation.

As described in the proposed rule, we are requiring litchi and longan fruit to be treated with irradiation to neutralize all plant pests of the class Insecta, except pupae and adults of the order Lepidoptera. Section 305.9 of the regulations specifies the requirements for the irradiation of imported commodities. These requirements provide effective safeguards for articles irradiated either prior to or after arrival in the United States. In addition, we will closely inspect consignments of these commodities for evidence of all quarantine pests, including P. litchii and A. litchii.

With regard to O. nephelii, the pest risk assessment that was published with the proposed rule lists the pests of litchi, longan, and rambutan fruit that are found in any of the member countries of the Association of Southeast Asian Nations, including Vietnam. Because this action only applies to Vietnam and O. nephelii is not found on litchi or longan fruit from Vietnam, treatment or inspection for this pest is not necessary.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Note: In our October 2011 proposed rule, we proposed to add the conditions governing the importation of litchi and longan from Vietnam as § 319.56-54. In this final rule, those conditions are added as § 319.56-70.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 604, we have performed a final regulatory flexibility analysis, which is summarized below, regarding the economic effects of this rule on small entities. Copies of the full analysis are available on the Regulations.gov Web site (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under FOR FURTHER INFORMATION CONTACT.

In the United States, litchi and longan fruit are commercially produced in Florida and to a lesser extent in Hawaii. Production in California is still largely in the developmental stage. Annual U.S. production volumes in 2008 were about 535 metric tons (MT) for litchi and 776 MT for longan. Virtually all U.S. farms that grow litchi and longan are believed to be small entities based on the Small Business Administration standard of annual receipts of not more than \$750,000.

Our review of available information suggests that the rule may have a negative economic impact on longan growers and, to a lesser extent, on litchi growers, particularly when the fruit is sold in Asian and Hispanic markets where the demand for produce tends to be more price-sensitive. The annual quantities of litchi and longan that Vietnam expects to export to the United

States, namely, 600 MT and 1,200 MT, respectively, would be equivalent to about 17 percent and 69 percent, respectively, of average annual U.S. imports for these two fruits, 2007-2010. Negative impacts for U.S. producers will be moderated to the extent that imports from Vietnam displace imports from other foreign sources. Widely ranging prices for litchi and longan among U.S. markets and consumers' varying purchasing criteria with regard to price and quality may indicate opportunities for domestic growers to alleviate negative effects of increased foreign competition through alternative marketing arrangements or marketing channels.

Executive Order 12988

This final rule allows litchi and longan fruit to be imported into the continental United States from Vietnam. State and local laws and regulations regarding litchi and longan fruit imported under this rule will be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the information collection or recordkeeping requirements included in this final rule, which were filed under 0579-0387, have been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, if approval is denied, we will publish a document in the Federal Register providing notice of what action we plan to take.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows

Authority: 7 U.S.C. 450, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. Section 319.56-70 is added to read as follows:

§ 319.56-70 Fresh litchi and longan from Vietnam.

Litchi (Litchi chinensis Sonn.) and longan (Dimocarpus longan Lour.) fruit may be imported into the continental United States from Vietnam only under the following conditions:

(a) Growing conditions. Litchi fruit must be grown in orchards registered with and monitored by the national plant protection organization (NPPO) of Vietnam to ensure that the fruit are free of disease caused by Phytophthora litchii.

(b) Treatment. Litchi and longan fruit must be treated with irradiation for plant pests of the class Insecta, except pupae and adults of the order Lepidoptera, in accordance with part 305 of this chapter.

(c) Labeling. In addition to meeting the labeling requirements in part 305 of this chapter, cartons containing litchi or longan must be stamped “Not for importation into or distribution in FL.”

(d) Commercial consignments. The litchi and longan fruit may be imported in commercial consignments only.

(e) Phytosanitary certificates. (1) Each consignment of litchi fruit must be accompanied by a phytosanitary certificate issued by the NPPO of Vietnam attesting that the conditions of this section have been met and that the consignment was inspected in Vietnam and found free of Phytophthora litchii.

(2) Each consignment of longan fruit must be accompanied by a phytosanitary certificate issued by the NPPO of Vietnam attesting that the conditions of this section have been met.

(Approved by the Office of Management and Budget under control number 0579-0387)

Done in Washington, DC, this 28th day of August 2014.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

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